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CASE NOS.: 2002-LHC-00047
2002-LHC-00523

OWCP NOS: 01-153334
01-155335

In the Matter of

CHARLES A. BUCK

Claimant

v.

ELECTRIC BOAT CORPATION

Employer

DECISION AND ORDER DENYING CLAIM

Before me is a motion for summary decision filed by the Employer, Electric Boat Corporation (Electric Boat), in the above matter which arises from a claim for benefits filed by Charles A. Buck (the Claimant), an Electric Boat employee, under the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901, *et seq.* (the "Act"). Because I find that no genuine issue of material fact has been raised and that Electric Boat is entitled to judgement in its favor as a matter of law, the motion is allowed, and the claim for benefits under the Act is denied.

I. The Motion

In support of its motion, Electric Boat submitted the following statement of material facts:

1. This case consists of two claims that have been consolidated, in which the claimant, Charles Buck, alleges that he suffered multiple injuries. One claim is for stress and exacerbation of diabetes and resulting neuropathy. The other claim is for neck, shoulder, hand and arm injuries due to repetitive trauma.

2. Mr. Buck worked for several years at the law firm of Murphy & Beane/National Employers Company. Murphy & Beane contracted with Electric Boat to adjust Electric Boat's workers' compensation claims.
3. In 2000, Electric Boat decided to form its own Self Administration Unit ("SAU") to manage its workers' compensation claims. Beginning in the fall of 2000, Electric Boat began interviewing and hiring a staff for its SAU. Mr. Buck applied for a position as an adjuster and was hired in November of 2000.
4. Mr. Buck was employed by Electric Boat as a Workers' Compensation Adjuster from November 6, 2000 until he voluntarily left the employ of Electric Boat on March 29, 2001.
5. During his five months of employment at Electric Boat, Mr. Buck worked in two locations. He initially worked at the National Employers Company building, in downtown New London, CT (the location of his prior employer) and later (beginning in December of 2000) at the Colonel Ledyard School building. The Colonel Ledyard School building is on property owned by Electric Boat; however, it is outside the Electric Boat shipyard. The shipyard and the Colonel Ledyard School building are separated by a public street and a parking lot.
6. Mr. Buck entered the shipyard only one time during his five months of employment at Electric Boat. Mr. Buck entered the shipyard and boarded a ship on that one occasion for a tour provided to every employee in the SAU, which lasted approximately two hours.
7. Mr. Buck's employment at Electric Boat was restricted to exclusively office work.
8. The only relationship between Mr. Buck's duties and the shipbuilding process was to administer workers' compensation claims for all Electric Boat employees.
9. The responsibilities of a Workers' Compensation Adjuster at Electric Boat include adjusting workers' compensation claims, using a new computer system, setting up payment schedules, organizing files, and reporting to superiors.
10. Mr. Buck alleges that his pre-existing injuries and conditions were exacerbated by typing and holding the telephone awkwardly at work and by stress brought on by work.

11. Mr. Buck's job responsibilities did not require him to enter the shipyard for any reason.

12. Mr. Buck has a remedy under the State of Connecticut Workers' Compensation Act, and he has filed a claim with the state.

Motion for Summary Decision at 1-3 (citations to exhibits appended to motion omitted). The motion is supported by the transcript of the Claimant's testimony taken at a deposition, an affidavit from Alvin J. Ayers, Director of the Workers' Compensation Unit at Electric Boat, and documentary evidence.

Electric Boat asserts that there is no genuine issue of material fact and that it is entitled to judgement as a matter of law since the Claimant does not meet either the "status" or "situs" tests for bringing his claim within the jurisdiction of the Act. Specifically, Electric Boat argues that the Claimant can only acquire maritime status for purpose of coverage by the Act if his duties were integral to the construction or repair of vessels or the loading or unloading of vessels. It cites a number of cases including *Neely v. Pittston Stevedoring Corp.*, 12 BRBS 859, 861 (1980) where the BRB held that there was no jurisdiction over a claim brought by an insurance claims adjuster based on its finding that the claimant, whose job was to investigate workers' compensation claims, performed a support function which was not unique to the waterfront and which had no significant impact on navigation or maritime commerce. Electric Boat also asserts that summary decision is warranted since the Claimant's alleged injuries did not occur on a maritime situs.

The Claimant has filed an objection to Electric Boat's motion, stating that he disputes the allegation that there is no genuine issue of material fact, particularly with respect to the assertions in paragraphs 5, 7, 9 and 11. However, he did not set forth any facts to contradict Electric Boat's allegations. The Claimant also points out that the "support service" rationale employed by the BRB to deny coverage in *Neely* was explicitly rejected by the United States Court of Appeals for the Second Circuit in *Arbeeny v. Director, OWCP*, 642 F.2d 672 (1981), *cert. denied*, 102 S.Ct. 140 (1981). Finally, the Claimant states that there is a genuine issue which needs to be litigated as to whether his work occurred at a covered situs and that he will testify that he "worked at an Electric Boat facility located less than a quarter mile from the water's edge . . . at a site adjoining the docks and building ways of the shipyard area." Objection at 2.

II. Findings of Fact and Conclusions of Law

Under the Rules for Practice and Procedure for Administrative Hearings, any party may "move with or without supporting affidavits for a summary decision on all or any part of the proceeding." 29 C.F.R. §18.40(a). A party opposing the motion may not rest on the mere allegations or denials of the motion but must "set forth specific facts showing that there is a genuine issue of fact for the hearing." 29 C.F.R. §18.40(c). An administrative law judge "may enter summary judgment for either party if . . . there is no genuine issue as to any material fact and [the] party is entitled to summary decision." 29

C.F.R. §18.40(d). A fact is material and precludes a grant of a summary decision if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or a defense asserted by the parties. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

The uncontested facts set forth in Electric Boat's motion establish that the Claimant exclusively performed office work related to the processing of workers' compensation claims filed by Electric Boat employees. He performed this work from an office in a building which is separated from the Electric Boat shipyard by a street and a parking lot. His duties did not require him to enter the shipyard or adjacent areas, and he only entered the shipyard on one occasion while working for Electric Boat when he was given a brief tour.

A claimant qualifies as an "employee" under section 2(3) of the Act, and thus may be said to have acquired maritime "status", if he or she is engaged in work which involves the loading, unloading, construction, or repairing vessels. 33 U.S.C. §902(3). Land-based work activity, such as that involved in the instant case, which is not performed by one of the maritime occupations specified in section 2(3) "will be deemed maritime only if it is an integral or essential part of loading or unloading a vessel." *Chesapeake & Ohio Ry. Co. v. Schwalb*, 493 U.S. 40, 45 (1989). In *Schwalb*, the Court held that railroad employees who were injured at a waterfront coal terminal while maintaining and repairing equipment used to remove coal from rail cars and convey it to ocean going vessels performed work essential to the ship loading process and, therefore, were covered by the Act. *Id.* at 47. With regard to the integral or essential nature of this work, the Court observed that "[w]hen machinery breaks down or becomes clogged or fouled because of the lack of cleaning, the loading process stops until the difficulty is cured." *Id.* See also *American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 59-60 (2nd Cir. 2001) (affirming, as supported by substantial evidence, ALJ's finding that union shop steward who went to cargo loading and unloading areas to resolve labor disputes involving covered maritime employees had employment status under section 2(3) where the evidence established that the disputes had the potential to interrupt loading and unloading operations and that the steward had the authority to order a work stoppage); *Sanders v. Alabama Dry Dock & Shipbuilding Co.*, 841 F.2d 1085, 1088-89 (11th Cir. 1988) (labor relations assistant who regularly went into shipyard work areas to resolve employee grievances had covered status as he performed work which was directly related to the employer's objective of "keeping the [ship]yard running, and uninterrupted by labor disputes, or misconduct of the workers"); *Watkins v. Newport News Shipbuilding and Dry Dock Co.*, ___ BRBS ___, BRB No. 01-0538 (March 5, 2002) (reversing ALJ's finding of no maritime status for janitor who picked up debris left by shipbuilders, holding that it was irrational not to draw an inference that failure to clear industrial debris would not lead to the type of work shutdown described in *Schwalb*).

In contrast to *Schwalb* and the other cases where maritime employment status has been found for land-based activities not specified in section 2(3), there is no evidence, and I am unable to infer from the uncontested facts set forth in Electric Boat's motion, that failure by the Claimant to perform his

duties in connection with the processing of compensation claims would lead to a work stoppage or otherwise interrupt the shipbuilding and repair activities carried out in the Electric Boat shipyard. While the Claimant in his objection states that he disputes certain of Electric Boat's factual assertions, he has not, with the exception of his statements relating to the situs issue, set forth specific facts showing that there is a genuine issue of fact requiring a hearing. Consequently, I am constrained to conclude on the undisputed material facts set forth in Electric Boat's motion that the Claimant is not an employee within the meaning of section 2(3) because he did not perform work that was an integral or essential part of the shipbuilding process.

The Claimant does, quite correctly, point out that the "support service" reasoning employed by the BRB in *Neely* has been rejected by the Second Circuit as inconsistent with *Northeast Terminal Co. v. Caputo*, 432 U.S. 249 (1977), and I have specifically declined to rely on *Neely* in ruling on Electric Boat's motion. Moreover, there is nothing in the Court's *Arbeeney* decision which suggests that the Claimant might have maritime status. The claimants in *Arbeeney* were pier guards whose jobs were to "insure the protection of cargo on the pier, dock and adjacent areas of marine terminals against theft, pilferage, vandalism and fire." 642 F.2d at 674. Obviously, if they did not perform their guard duties, cargo would be stolen or destroyed, and the cargo loading/unloading process would come to a halt. As discussed above, the Claimant has made no such showing, nor can such a scenario be reasonably inferred from the record before me. Indeed, the Court in *Abreeny* directly rejected the argument seemingly advanced by the Claimant that the Act should be construed to cover all waterfront employment as to do so would "in effect read the "status" requirement out of the Act." *Id.* (quotations in original), citing *Pittston Stevedoring Corp. v. Dellaventura*, 544 F.2d 35, 56 (2nd Cir. 1976), *aff'd sub nom Northeast Terminal Co. v. Caputo*, 432 U.S. 249 (1977).

Based on the foregoing, I conclude that Electric Boat is entitled to summary decision in its favor. Accordingly, its motion is granted and the following order is entered.

III. Order

The claims filed by Charles A. Buck in OWCP Nos. 01-153334 and 01-153335 are denied, and the hearing currently scheduled for April 3, 2002 in New London, Connecticut is canceled.

SO ORDERED.

A
DANIEL F. SUTTON
Administrative Law Judge

Boston, Massachusetts
DFS:dmd